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Submission to the WA Government, Economics and Industry Standing Committee  
Re: Franchising Bill 2010.

I am a member of the WA franchising community.

I strongly oppose the introduction of State-based legislation on franchising and I strongly oppose the Franchising Bill 2010.

For good reasons, the franchise sector has always been regulated nationally -- and that is the way it should stay.

To add State laws will simply add to the compliance burden and therefore add costs to all franchise businesses.

In my view, regulation is comprehensive and well supervised. The Franchising Code of Conduct and the Trade Practices Act, overseen by the ACCC, provide all that we need. We do not want more regulations - especially if they have the potential to overlap with existing laws. This is a recipe for confusion, and added cost.

I fail to see why we need these proposed new laws. This is the third time the issue has been considered by the WA Government (first Labor, then Liberal) in the past three years. We have just had two major Federal inquiries on this matter that specifically considered - and acted on -- the recommendations of the WA inquiry and the SA inquiry. What has changed since then to justify this latest move?

I see no evidence of major sector-wide issues in franchising in WA. However if there are problems, they should be fixed in the context of the existing framework - at a Federal level in the Franchising Code or by ACCC action.

I also oppose the introduction of any new statutory duty of good faith, let alone a State based duty. Good faith is already required by common law. A new definition implies different meaning. How much time and money will be wasted while we have legal argument over what the new definition means? Imagine how disruptive that will be if WA does this, SA does the same, and perhaps some other State as well - each with potentially their own version of what constitutes good faith.

We already have a common law requirement to act in good faith; we already have a national Franchising Code; and we have TPA prohibitions on misleading and deceptive conduct and unconscionable conduct. That is enough. To go down the proposed path will simply create a platform for argument -- and that is not constructive for franchisees or franchisors.

To my mind, this Bill will add nothing but cost and uncertainty. That will cast a cloud over the sector, disadvantage WA-based systems compared to their Eastern State counterparts, and undermine the value of WA franchise businesses.

I'm disappointed the Bill is even before the Parliament. I don't know of any consultation which occurred with the sector and I doubt that any serious consultation could have been conducted in WA which would have prompted the initiatives suggested in this Bill. It should not proceed.

Yours sincerely

Alan J Drew  
Director